JUN 15 2006

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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

BAP No.

Bk. No.

Ref. No. 05-27

MEMORANDUM¹

HAROLD S. MARENUS, CLERK U.S. BKCY. APP. PANEL OF THE NINTH CIRCUIT

NV-05-1458-MoSMa

S-94-20613-BAM

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In re:

Trustee;

TRUSTEE,

ELVA JEAN HAUGEN,

ELVA JEAN HAUGEN,

RAZIA ISANI; GUNAY SARIHAN; LARRY L. BERTSCH, Chapter 7

UNITED STATES

Debtor.

Appellant,

Appellees.

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27 28 Before: MONTALI, SMITH and MARLAR, Bankruptcy Judges. ¹ This disposition is not appropriate for publication and

Submitted Without Oral Argument on May 18, 2006²

Filed - June 15, 2006

Appeal from the United States Bankruptcy Court

for the District of Nevada

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding.

may not be cited except when relevant under the doctrines of law

of the case, issue preclusion or claim preclusion. See 9th Cir.

BAP Rule 8013-1.

On May 4, 2006, we issued an order taking this matter off the oral argument calendar.

In accordance with a pre-filing order, the bankruptcy court struck certain pleadings filed by the debtor and imposed sanctions of \$100.00 because the debtor did not obtain prior permission before filing the pleadings. The debtor appeals and we AFFIRM.

I. FACTS

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On April 20, 1995, the bankruptcy court entered a pre-filing order (the "Pre-Filing Order") on the case docket requiring Elva Jean Haugen ("Debtor") to obtain leave of court before filing a pleading:

[It is] ORDERED that the Clerk of Bankruptcy Court for the District of Nevada will file no further documents from Debtor Haugen in this case. Any pleadings received from Debtor shall be stamped received after which time they will be forwarded to a Bankruptcy Judge of this Court for review. If in fact, the pleadings are deemed meritorious, they will be returned to the Clerk for filing, after which time the Debtor shall cause the same to be served upon the attorneys for Panel Trustee, Larry Bertsch; creditor Barbara Clark; and the US Trustee. after review, the pleadings are not found to be meritorious, the same shall be returned to Debtor, shall not be filed of record, and the received copy shall be removed from the Court file. [It is] FURTHER ORDERED that this Order shall not apply to any pleadings presented by Debtor designated as an "appeal" of any of this Court's Order whether such appeal be directed to the US District Court, the Bankruptcy Appellate Panel, or the Ninth Circuit Court of Appeals itself. FURTHER ORDERED if Debtor disobeys the orders and instructions contained in this Order, she will subject herself to immediate monetary sanctions and she will be ordered to appear to show cause why she should not be held in contempt of this Court's orders.

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<u>See</u> Docket No. 174 in Case 94-20613 in the Bankruptcy Court for the District of Nevada. The case docket reflects that Debtor did not appeal the Pre-Filing Order, but did appeal subsequent orders denying her request to file other pleadings. Debtor's case was closed on April 4, 1997.

On July 20, 2005, Debtor filed a "Motion For Court to Enforce 8/10/94 Order." This motion was opposed by appellees Trustee and Owners. On August 22, 2005, Debtor filed a document labelled "Emergency Ex Parte Request For This Honorable Court to Reopen BK-S-20613 So My 7-20-05 Motion to Enforce 8-10-94 Order May Be Heard." The court held a hearing on both motions on August 24, 2005, and entered an order denying both motions on September 27, 2005 (the "September 27 Order"). Debtor did not appeal the September 27 Order.

On September 26, 2005, Debtor filed an "Ex Parte Request To Be Allowed To Submit State Court Records For Review." On October 7, 2005, the bankruptcy court entered an order denying that request because (1) Debtor did not obtain consent to file the request and (2) because the request was moot in light of the court's September 27 Order. The court stated "[Debtor] is again cautioned that further violations of the order restricting her ability to file documents will result in monetary sanctions."

On October 4, 2005, Debtor presented the court with a "Motion for Court to Reconsider My Motions to Reopen My Bankruptcy Case and Motion for Court to Enforce Honorable Jduge [sic] Jones's

The "8/10/94 Order" (available at Docket Number 82 on the case docket) stated that the court would defer ruling on ownership issues regarding certain real property until submission of further briefs. It also prohibited Debtor and her family trust from transferring ownership of the property without further order of the court. In her motion to enforce the 8/10/94 order, Debtor stated that the bankruptcy court never entered an order transferring the property from her or her family trust. She was incorrect. On November 3, 1994, the court entered an order noting that title of the property belonged to the chapter 7 trustee Larry L. Bertsch ("Trustee") and that Trustee could sell or convey the property. On September 28, 1995, the bankruptcy court entered an order approving the sale of the property from Trustee to Razia Isani and Gunay Sarihan ("Owners").

8/10/94 Order." On October 24, 2005, Debtor submitted for filing an "Addendum to Motion for Court to Reconsider My Motions to Reopen My Bankruptcy Case & Motion for Court to Enforce Honorable Judge Jones's 8-10-94 [Order]." Neither of these documents is in the record.

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On November 7, 2005, Judge Bruce Markell sent a letter to Debtor rejecting these documents; the letter is available on the court's docket at Docket No. 359. The letter notes that despite acknowledgments by Debtor that she understood the purpose and meaning of the Pre-Filing Order and the significant costs and ramifications of ignoring the court's prior orders, Debtor continued to submit meritless pleadings for filing (without first seeking approval from the court). The letter also notes that the court had reviewed the submitted documents and found them without merit. The court concluded: "Your pattern of violating rules and orders known and understood by you and then apologizing has been duly noted by me and by other prior judges that have dealt with your case. Any continued abuse of the system will result in sanctions as provided for in Judge Jones' [Pre-Filing Order]."

Thereafter, Debtor submitted an "Amendment of: Motion for Court to Reconsider my Mtoins [sic] to Reopen my Bankrptcy [sic] Case; Motion for Court to Enforce Honorable Judge Jone's [sic] 8-10-94 Order; and Motion to Review the State Court Proceedings as Per 8-10-97 Order." On November 9, 2005, the bankruptcy court entered an Order Decreeing No Hearing (the "Sanctions Order") which struck that pleading, denied a hearing on the matter, and imposed a sanction of \$100.00 in accordance with the Pre-Filing Order and "in response to [D]ebtor's repeated, unmeritorious

filings." Debtor filed a timely notice of appeal of the Sanctions Order on November 15, 2005.

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II. ISSUE

Did the bankruptcy court err in entering the Sanctions Order?

III. STANDARD OF REVIEW

A court's vexatious litigant pre-filing order is reviewed for an abuse of discretion. De Long v. Hennessey, 912 F.2d 1144, 1146 (9th Cir. 1990), cert. denied, 498 U.S. 1001 (1990). To the extent the bankruptcy court relied on such a pre-filing order in striking pleadings submitted by Debtor, we review the decision to strike the pleadings for abuse of discretion. Id.; cf. Denton v. Hernandez, 112 S.Ct. 1728, 1734 (1992) (applying abuse of discretion standard to an order denying leave to file an in forma pauperis complaint). In addition, the imposition of sanctions is reviewed for an abuse of discretion. Weissman v. Quail Lodge Inc., 179 F.3d 1194, 1197-98 (9th Cir. 1999).

Findings of fact by the bankruptcy court "shall not be set aside on appeal unless clearly erroneous." Fed. R. Bankr. P. 8013; Abrams v. Sea Palms Assocs., Ltd. (In re Abrams), 229 B.R. 784, 788 (9th Cir. BAP 1999), aff'd, 242 F.3d 380 (9th Cir. 2000).

IV.
DISCUSSION

As a preliminary matter, we note that other than two sentences requesting that the \$100.00 monetary sanction be

"forgiven" by us, Debtor's brief does not address specifically the 2 order on appeal: the Sanctions Order. Nor does Debtor address the 3 Pre-Filing Order. Debtor cites no authority for reversal. 4 Rather, she engages in a collateral attack on a 1993 state court judgment and repeats her contention that the transfer of the 5 property to Owners somehow violated the "8-10-94 Order." Because 7 Debtor fails to raise any issue or cite any authority to show that the court erred in entering the Sanctions Order, we could simply affirm on that basis. Nonetheless, because we are to construe pro 10 se appellate briefs liberally even when it is difficult to ascertain the appellant's contentions (see Balistreri v. Pacifica 11 12 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988)), we will examine the record to determine if any basis for reversing the Sanctions 13 14 Order is clearly evident.

In deciding whether a court abused its discretion in refusing or striking pleadings in accordance with a pre-filing order, an appellate court may review the issuance of the initial pre-filing order for abuse of discretion. See West v. Procunier, 452 F.2d 645, 646 (9th Cir. 1971). Courts "have the inherent power to file restrictive pre-filing orders against vexatious litigants with abusive and lengthy histories of litigation." Weissman, 179 at 1197, citing De Long, 912 F.2d at 1147-48.

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Such pre-filing orders may enjoin the litigant from filing further actions or papers unless he or she first meets certain requirements, such as obtaining leave of the court or filing declarations that support the merits of the case. See, e.g., O'Louglin v. Doe, 920 F.2d 614, 616 (9th Cir. 1990) (requiring pro se inmate deemed vexatious litigant to show good cause before being permitted to file future actions); De Long, 912 F.2d at 1146-47 (prohibiting filings of pro se litigant proceeding in forma pauperis without leave of the district court); Moy v. United States, 906 F.2d 467, 469

(9th Cir. 1990) (forbidding pro se plaintiff from filing further complaints without prior approval of district court).

Weissman, 179 F.3d at 1197.

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An order restricting future court filings must comply with the following requirements: (1) the plaintiff must be given notice and the opportunity to oppose a restrictive pre-filing order limiting access to the court; (2) the order must be supported by case filings that support a limitation on future filings; (3) the court must make substantive findings as to the frivolous or harassing nature of the plaintiff's filings; and (4) the order must be narrowly tailored to remedy the plaintiff's particular abuses. De Long, 912 F.2d at 1147-49.

Debtor has not argued that the Pre-Filing Order fails to satisfy these requisites. Moreover, the record demonstrates that the order satisfies the first and fourth requirements. The Pre-Filing Order granted a motion by Trustee that was noticed to Debtor and set for hearing. Debtor filed at least two objections to the Trustee's motion. In addition, the Pre-Filing Order is narrowly tailored to prevent litigation abuses by Debtor; the order does not apply to appeals and requires merely that the court approve submissions to the bankruptcy court as meritorious before such pleadings are filed.

Debtor has not provided the transcript of the hearing or the Trustee's motion, but a review of the docket demonstrates her propensity for filing numerous pleadings to deter execution of court orders. Because Debtor has not provided us with a copy of the Pre-Filing Order, a copy of the motion leading to the Pre-Filing Order, and the transcript of the hearing which would

presumably contain the court's findings in support of its order, we cannot conclude that the court erred by failing to comply with the second and third requirements under <u>De Long</u> when it entered the Pre-Filing Order. <u>See Abrams</u>, 229 B.R. at 789 (appellant has the burden of providing a sufficient record on appeal -- including a full transcript of relevant hearings -- and the failure to provide an adequate record is grounds for affirming the bankruptcy court's decision); <u>McCarthy v. Prince (In re McCarthy)</u>, 230 B.R. 414, 416 (9th Cir. BAP 1999) (by failing to provide a transcript of the trial court's oral findings of fact and conclusions of law as required by Federal Rules of Bankruptcy Procedure 8006 and 8009, appellant could not demonstrate error by the trial court).

The appellants bear the responsibility to file an adequate record, and the burden of showing that the bankruptcy court's findings of fact are clearly erroneous. Burkhart v. FDIC (In re Burkhart), 84 B.R. 658, 660 (9th Cir. BAP 1988). 'Appellants should know that an attempt to reverse the trial court's findings of fact will require the entire record relied upon by the trial court be supplied for review.' 84 B.R. at 661.

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Kritt v. Kritt (In re Kritt), 190 B.R. 382, 387 (9th Cir. BAP 1995). Therefore, based on the record and Debtor's failure to address the validity of the Pre-Filing Order on appeal, we conclude that the bankruptcy court did not abuse its discretion in entering it.

Having determined that the bankruptcy court did not abuse its discretion in entering the Pre-Filing Order, we now turn to the Sanctions Order. A review of the bankruptcy court's orders of November 4, 1994, and September 28, 1995, give lie to Debtor's repeated assertions in her various 2005 pleadings that the court did not approve a transfer of the real property to Owners. Merely

repeating these assertions in amended motions for reconsideration and on appeal does not make them any more meritorious. Debtor has not shown that the bankruptcy court erred in concluding that the pleadings were without merit. The court therefore did not abuse its discretion in striking the pleadings.

Likewise, Debtor has not shown that the court abused its discretion in sanctioning her \$100.00 for attempting to file pleadings without obtaining the court's prior approval. In the only portion of her brief addressing this issue, Debtor states: "I deeply regret forgetting to tell the clerk that she must not file my papers, but just stamp them received. Will this HONORABLE COURT mercifully forgive my errors and VOID the SANCTIONS?" Judge Markell's letter, however, shows that Debtor will apologize for filing documents without complying with the Pre-Filing Order, but then continues to submit such documents for filing. Despite several admonishments to Debtor by the Bankruptcy Court to comply with the order, she did not do so. Under such circumstances, the court did not abuse its discretion in sanctioning Debtor \$100.00.

V. CONCLUSION

For the foregoing reasons, we AFFIRM.